Filed 1/26/10 In re Ra. S. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re Ra.S., a Person Coming Under the Juvenile Court Law.	
YOLO COUNTY DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES, Plaintiff and Respondent, v. R.S., Defendant and Appellant.	C061451 (Super. Ct. No. JV06-819)

R.S., mother of the minor, appeals from orders of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395 [further undesignated statutory references are to the Welfare and Institutions Code].) Appellant contends the evidence established several exceptions to the preference for adoption as a permanent plan and argues that, because there was an actual conflict between the siblings, the court should have appointed separate counsel for the minor. We affirm.

FACTS

In November 2006, the Department of Employment and Social Services (Department) filed a petition alleging neglect of the nine-year-old minor after 48 months of reunification and family maintenance services, which were provided pursuant to an earlier case, had failed to improve appellant's parenting to the point that the minor and his siblings were safe in her care.[1] The new petition was filed five months after the prior case was closed.

The minor was not detained until March 2007. The reports stated the minor's behavioral problems were so severe, his school day had been limited to two hours. Appellant did not follow through with attending his medical appointments, providing his prescribed medication, or supervising his schoolwork. Appellant did not understand why she should follow through in addressing the minor's needs and, as a result, the minor and his siblings were victims of appellant's chronic neglect and poor parenting. Appellant actively manipulated the minor by telling him if he were removed from her care she would not try to get him back and he would be left alone in foster care. As a result of years of neglect, deprivation, and inability to feel safe in appellant's care, the minor and his

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[1] The minor had seven siblings and half siblings but none of them are subjects of this appeal. Only the five youngest siblings initially were placed in foster care. The oldest sibling was later placed in protective custody while one half sibling remained with appellant and another was living in an unknown location.

siblings were anxious about being alone. The older children insisted on caring for the younger ones, indicating they had been expected to do so. The oldest minor remaining in appellant's care had run away, because, at 15, he was tired of parenting his siblings. The court sustained the petition in April 2007.

A memo filed in June 2007 stated that, although consistent in attending visits, appellant had difficulty in dealing with the children, who were emotional and distraught. As a result, smaller visits were scheduled to make them easier for the children and appellant. Nonetheless, appellant had a hard time staying awake, addressing the children's needs, and following visit rules, instead bringing inappropriate gifts and snacks. Appellant expected the older siblings to parent the younger ones and for all of them to meet her needs, in effect, training them to do so.

An addendum report in July 2007 noted ongoing problems at visits with appellant bringing excessive gifts and food, relying on the older children for parenting, discussing the case and dwelling on the father's death and photographs of his gravesite. Appellant spent her energy on getting around the visit rules rather than following them and interacting appropriately with the minor.

The disposition report stated the minor was placed with the maternal great-uncle in June 2007. The report recommended denial of services to appellant and a permanent plan of legal guardianship for the minor. However, the court granted

reunification services and discretion to place the minors with the maternal grandmother.

By September 2007, behavior modification techniques had improved the minor's adjustment to placement. The status review report in January 2008 stated the minor, who remained placed separately from his siblings, had improved in school and was in therapy. At visits, appellant continued to try to undermine the Department and to discuss inappropriate topics including promises the minors would return to her care. At the review hearing, the court terminated appellant's services.

The report filed in July 2008 for the section 366.26 hearing recommended a permanent plan of adoption for the minor. The other siblings were in group home or relative placements with permanent plans of long-term foster care for the two oldest and adoption for the three younger children. The report stated appellant now had monthly visits with the minors and the visits remained chaotic. The minor had made significant progress in school and his behavioral problems had decreased. He was still in therapy but the frequency had decreased as he stabilized. The current relative caretakers, who were also the prospective adoptive parents, had provided a structured home life to which the minor responded and were committed to adopting him. Initially, the minor did not want to be adopted but after further discussions decided that he did want his current caretakers to adopt him.

The minor testified that, to him, adoption meant you could still see your parent but that the Department was not involved

in your life. He wished he could see appellant more often and thought he would if he were adopted. At first, he did not want to be adopted because he would not be with appellant but the social worker explained it just meant the Department would not be there anymore. He understood from his caretaker that if appellant did what she should do and he was good, then there would be more visits. He still wanted to live with appellant but understood if he was adopted that could not happen.

Following a visit with appellant, his testimony and starting a new school, the minor displayed an increase in behavioral problems. In a meeting to discuss those problems, the minor admitted to lying and disrespectful behavior but said he wanted to remain in his relative placement and his behavior improved.

A second assessment in December 2008 again recommended termination of parental rights for the minor and his younger siblings. The maternal grandmother was the prospective adoptive parent for the younger siblings. During a number of discussions, the minor reaffirmed that he wanted to stay with the relative caretakers who "'will be able to make decisions for me and take care of me until I grow up.'" The social worker believed the minor had a developmentally appropriate understanding of adoption. The minor maintained frequent contact with his siblings, including a monthly visit which also included appellant.

In January 2009, parental rights were terminated as to the minor's younger siblings. The minor's hearing was continued to

March 2009, by which time the minor was 12 years old. At the hearing, the social worker testified he had explained adoption to the minor and the minor stated if he could not go home, he wanted to stay in his current placement. The social worker further testified that the minor correctly believed he would have ongoing contact with appellant because the caretakers were supportive of contact with appellant and the siblings after adoption. However, in the social worker's opinion, adoption was in the minor's best interest whether or not there was ongoing contact with appellant and the siblings because it offered the most permanent plan. The social worker noted the minor tended to take a more adult role in visits and displayed some agitation after visits with appellant and the other minors. The minor did not have the same reaction after visits with the siblings.

At argument, minor's counsel argued guardianship would be the best permanent plan for the minor. Appellant's counsel concurred, arguing the minor objected to adoption and there was a beneficial relationship between the minor and his family. The court terminated parental rights.

DISCUSSION

I

Appellant argues the evidence showed termination of parental rights would be detrimental to the minor because the 12-year-old minor objected to adoption and termination would substantially interfere with the minor's relationships both with appellant and with his siblings. (§ 366.26, subds.

(c)(1)(B)(i), (ii), (v).) We conclude appellant failed to meet her burden to establish any of these circumstances.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose between one of several possible alternative permanent plans for a minor child. "'*The permanent plan preferred by the Legislature is adoption*. [Citation.]' [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child. [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368; original emphasis.) There are only limited circumstances which permit the court to find a "compelling reason for determining that termination of parental rights would be detrimental to the child." (§ 366.26, subd. (c)(1)(B).) The party claiming the exception to termination has the burden of establishing the existence of any circumstances which constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 5.725(d)(3); Evid. Code, § 500.)

A. Benefit Exception

One of the circumstances in which termination of parental rights would be detrimental to the minor is: "The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The benefit to the child must promote "the well-being of the child to such a degree as to

outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th, 567, 575.) Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

The evidence showed regular contact between appellant and the minor and that the minor enjoyed visits with appellant. It also showed that the minor was very concerned about ongoing contact with appellant. However, the evidence further showed that the nature and quality of the interaction was not positive. From the outset, appellant ignored visit rules, discussing the case and undermining the Department. Appellant expected the older minors to care for the younger ones and that the minors should meet her needs rather than her caring for theirs. These aspects of visits remained unchanged despite cautions to appellant as shown by the minor's continuing to take an adult role in visits as appellant had trained him to do. In contrast

to the minor's home life where he was expected to be the child and had structure and stability, visits with appellant were chaotic and necessarily confusing to the minor, leading to agitation on his part which did not occur when he visited his siblings without appellant. Having established only regular and loving contact but not a positive emotional relationship, or appropriate parent-child interaction, appellant failed to establish this exception to termination of her parental rights.

B. Sibling Exception

A second circumstance under which termination of parental rights would be detrimental is when "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

The court must consider the interests of the adoptive child, not the siblings, in determining whether termination would be detrimental to the adoptive child. (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813; *In re Celine R.* (2003) 31 Cal.4th 45, 49-50.)

"To show a substantial interference with a sibling relationship the parent must show the existence of a significant

sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

The minor had lived with his siblings for many years before being removed in this case and they doubtless had shared experiences of neglect and trauma. However, there is no evidence the shared experiences created a significant relationship between the minor and his siblings that would outweigh the benefit to him from the permanence of adoption.

Once removed from appellant's care, the minor was in a placement separate from his siblings for nearly two years. During this time the minor was able to focus on his own emotional and behavioral issues and make great progress in achieving stability. He evidently enjoyed visits with his siblings and testified he would be sad not to visit them, but neither he nor his siblings ever indicated they had such a significant relationship with each other that they would suffer detriment if the relationship were terminated. Appellant did not establish the sibling exception to termination.

C. Minor's Objection

A third circumstance under which termination of parental rights would be detrimental is when "[a] child 12 years of age or older objects to termination of parental rights." (§ 366.26,

subd. (c)(1)(B)(ii).) To establish this exception to the preference for adoption, the minor's statements must constitute an unequivocal objection to adoption, not merely expressions of conflicting preferences. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1334-1335.)

At no time did the minor unequivocally object to adoption. He testified his understanding of adoption was that he would continue to see appellant without interference by the Department. This was not surprising since he was aware the relative caretakers supported contact with appellant. The minor also recognized that continued visits were conditional on appellant's behavior and his own. However, in testimony and in later statements to the social worker, the minor was clear that he wanted to remain with his relative caretakers and have them take care of him and make decisions for him until he grew up. Appellant did not demonstrate the minor unequivocally objected to adoption.

Because appellant did not establish any compelling reason for determining termination of parental rights would be detrimental to the minor, the juvenile court correctly selected adoption and the minor's permanent plan.

II

Appellant contends the juvenile court should have appointed separate counsel for the minor because the minor and the siblings had conflicting interests.

The record does not show that anyone made an objection in the juvenile court to proceeding with the same counsel for the

minor and his siblings. Counsel on appeal has conceded this in oral argument. Failure to raise an issue in the trial court forfeits the contention on appeal. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558; *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.) Even assuming an objection was made, the contention fails.

The issue was addressed by the Supreme Court in *In re Celine R.*, *supra,* 31 Cal.4th 45. The court held "that the court may appoint a single attorney to represent all of the siblings unless, at the time of appointment, an actual conflict of interest exists among them or it appears from the circumstances specific to the case that it is reasonably likely an actual conflict will arise. After the initial appointment, the court must relieve counsel from the joint representation when, but only when, an actual conflict of interest rises." (*Id.* at p. 50.) Further, "error in not appointing separate counsel for a child or relieving conflicted counsel" requires reversal only if it is reasonably probable the outcome would have been different but for the error. (*Id.* at pp. 59-60.) An actual conflict does not necessarily arise when there is a purely theoretical or abstract conflict of interest among the siblings, when some of the siblings appear more likely than others to be adoptable, or when the siblings have different permanent plans. (Cal. Rules of Court, rule 5.660(c)(1)(C)(iv), (v).)

Here, no actual conflict appears. The minor and three of his siblings had permanent plans of adoption with relative caretakers. The two older siblings had permanent plans of long-

term foster case. The record clearly shows that counsel's representation of the several minors with these disparate plans was tailored to what counsel perceived was in the best interests of each minor, i.e., counsel advocated for long-term foster care for the sibling placed in a group home, informing the court of her objection to adoption and her desire for increased visits with appellant; counsel did not oppose adoption of the three youngest siblings by the maternal grandmother; and counsel advocated for guardianship for this minor. The various plans were designed to, and did, meet each child's needs for both stability and interaction with each other. As we have seen, there was no evidence of a strong sibling relationship which would have precluded the various permanent plans and there is no suggestion all the minors could have been placed together or returned home. Counsel's advocacy was not hampered by any actual conflict between the siblings. Accordingly, the court was not required to appoint separate counsel for the minor.

DISPOSITION

The order of the juvenile court is affirmed.

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

SIMS, J.